REMARKS/ARGUMENTS

Claims 1-28 are pending in this application. Applicants have amended claims 14 and 26. Applicants have also amended claims 18, 21, 22 and 24 solely to correct minor, inadvertent typographical errors. In view of the above amendment and following remarks, applicants submit that all of pending claims 1-28 are in condition for allowance. Accordingly, applicants respectfully request a timely indication of allowance.

In the Final Rejection dated June 9, 2005, the examiner maintained the rejection of claims 1-25 for double patenting under 35 U.S.C. § 101 as allegedly unpatentable over U.S. Patent No. 6,750,036 ("the '036 patent"). In response to the previous Office action, applicants highlighted several differences between the claims of the present application and those of the '036 patent. For example, applicants noted that while the claims of the '036 patent recite a spectral analyzer, the claims of the present application recite a tunable filter. However, the examiner takes the position that the '036 patent fails to describe a spectral analyzer that is operational without a tunable filter. (Office action, page 3). Applicant respectfully disagrees.

The '036 patent specifically describes the spectral analyzer as including "a first mirror that directs the incoming light to a grating, which disperses the light over [an] appropriate wavelength range." (Column 4, lines 18-21). The dispersed light is then directed to a second mirror which directs the light to the detector. (Column 4, lines 21-27). In place of the grating, the spectral analyzer may include "a prism

or other light-dispersing structure." (Column 4, lines 22-24). Nowhere in this description of the spectral analyzer is the spectral analyzer described as including a tunable filter.

In fact, the tunable filter is described as an alternative to the spectral analyzer. (Column 4, lines 47-51, stating that "[i]n place of [the] spectral analyzer, [the] system includes a tunable filter"). Based on this description, the '036 patent does indeed describe the spectral analyzer as operational without a tunable filter. Therefore, the examiner's contention that the tunable filter is a necessary component of the spectral analyzer is erroneous.

In maintaining the rejection of claim 14, the examiner argues that "a detector" recited in the '036 patent is equivalent to "a plurality of detectors" recited in the present application. (Office action, page 6). In so arguing, the examiner asserts that both the '036 patent and the present application recite "converting the fluorescence into a single corresponding signal that [is] received and processed by a different detector for each excitable marker analyzed." (Office action, page 6). Applicant respectfully disagrees.

Claim 14 of the '036 patent recites "a detector that is operative receive the processed fluorescence into a corresponding signal" and "an analyzer that is operative to receive the signal and identify the presence of a contribution to the signal from each of the plurality of different excitable markers." The repeated recitation of the signal indicates that only one signal is generated by the detector.

Claim 14 of the present application, as amended, recites "a plurality of detectors operative to receive the processed fluorescence and to convert the fluorescence into a corresponding plurality of signals" and "an analyzer that is operative to receive the plurality of signals and to qualitatively and quantitatively identify the contribution to the fluorescence from each of the plurality of different excitable markers." The repeated reference to the plurality of signals indicates that more than one signal is generated by the plurality of detectors, in stark contrast to the single signal recited in claim 14 of the '036 patent. In addition, claim 14 recites that the analyzer identifies the contribution of each excitable marker to the fluorescence, rather than the signal as recited in the '036 patent. This distinction further emphasizes that claim 14 of the present application recites a plurality of signals which contribute to the fluorescence, and not a single signal which is the fluorescence, as recited in the '036 patent. Accordingly, the examiner's contention that both the '036 patent and the present application recite converting the fluorescence into a single corresponding signal that is received and processed by a different detector is erroneous.

To be consistent, applicants have also amended claim 26 to recite "an analyzer that is operative to receive the plurality of signals and to qualitatively and quantitatively identify the contribution to the fluorescence from each of the plurality of different excitable markers." In addition, applicants note that the examiner has neither rejected nor allowed claims 26-28. However, applicants submit that these claims, each of which

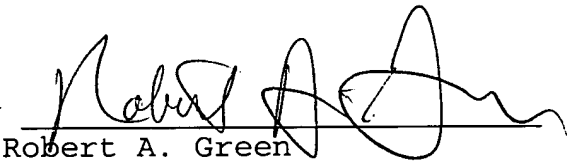
recite a laser scanning microscope, are in condition for allowance.

Finally, the examiner maintained the rejection of claims 1-25 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-33 of U.S. Patent No. 6,403,332. In that regard, applicants file herewith a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c).

For all the foregoing reasons, applicants respectfully submit that all of pending claims 1-28 are in condition for allowance. Applicants, therefore, respectfully request a timely indication of allowance. If there are any remaining issues that can be addressed by telephone, applicants invite the examiner to contact the undersigned at the number indicated below.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 

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